

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1179 of 1998

in

SPECIAL CIVIL APPLICATION No 7720 of 1998

with

Civil Application No. 9096 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHARAT CHEM LABORATORIES

Versus

STATE OF GUJARAT

Appearance:

MR MJ PARIKH for Appellant
MR PG DESAI G.P. for respondent.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 25/09/98

ORAL JUDGEMENT(Per C.K. Thakker, J.):

1. Admitted. Mr. P.G. Desai, learned Government

Pleader appears and waives service of notice of admission on behalf of respondent. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This appeal is filed against an interlocutory order passed by learned Single Judge so far as it adversely affects the appellant.

3. Being aggrieved by an order dated August 10, 1998, Annexure 'D' to the petition, the appellant/petitioner approached this Court. It was the case of appellant that though no order of recovery of amount could have been passed, an action was taken. The learned Single Judge was, prima facie, satisfied on merits and entertained the petition by issuing Rule on September 15, 1998. He also issued notice as to interim relief returnable on September 29, 1998.

4. Mr. Parikh, learned counsel for appellant, submitted that the point is concluded by a decision of the Supreme Court in State of Karnataka v. Shree Rameswara Rice Mills, AIR 1987 SC 1359 as well as by a decision of the learned Single Judge in Special Civil Application No. 2414 of 1982. Since the respondent authorities are determined to recover the amount, the learned Single Judge has committed an error in not granting interim relief.

5. We may state that we are not expressing any opinion on merits of the matter particularly when the matter is pending before the learned Single Judge. In our opinion, however, since the petition is entertained and rule is issued, during the pendency of hearing of rule or in any case, decision on interim relief, the appellant ought to have been protected.

6. In the facts and circumstances, therefore, the appeal is allowed and it is directed that till the rule is heard or hearing as to interim relief is concluded, the respondent authorities will not recover any amount in pursuance of order dated August 10, 1998, Annexure 'D' to the petition. The appeal is accordingly allowed to the above extent. No order as to costs.

7. No order on Civil Application.

(karan)